



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 14TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE V PARTHIBAN

O.A.NO.1023 OF 2019

IN

C.S. No.657 of 2019

E.P.INDUMATHI

D/o. Mr.A.Srinivasulu

W/o.Mr.E.P.Parthasarathy,

Old No.14, New No.29,

Rangabashyam Street,

West Saidapet,

Chennai 600 015.

..Applicant/PLAINTIFF

-VS-

1. A.SRINIVASULU (Deceased) (*)

S/o.Late A.Varadharajulu Chetty,

Old NO.21, A New No.9,

Plot No.2045 H - Block 5th Street,

Off 12th Main Road, Anna Nagar,

Chennai 600 040.

2. A.S.SETHURAMAN

S/o.Mr.A.Sinivasalu,

NO.1/259 Perumal Koil Street,

Sholavaram, Chennai 600 067.

3. A.S.NARAYANAN

S/o.A.Srinivasulu,

Old NO.21 A, New No.9 Plot NO.2045 ,

H-Block, 5th Street, Off 12th Main Road,

Anna Nagar, Chennai-600 040.



4. A.S.KANNAN
S/o.A.Srinivasulu,
Flat No.11/11,
Golden Treasure Apartments,
Vanagaram, Chennai - 600 095.

5. SEETHALAKSHMI
D/o.Mr.A.Srinivasulu
W/o.Mr.G.Ramakrishnan
Old No.41 New No.22
7th Cross Street,
Second Floor, Shenoy Nagar,
Chennai 600 030.

6. A.S.GEETHALAKSHMI
D/o.Mr.A.Srinivasulu
W/o.Mr.T.Srinivasan
Plot NO.2 Door No.16, 2nd Street,
lakshmi Nagar, Nanganallur
Chennai-600 061.

7. A.S.BANUMATHY
D/o.Mr.A.Srinivasulu,
W/o.Mr.Mohan Ram,
Old NO.21 A, New No.9, Plot No.2045
H – Block, 5th Stret, Off 12th Main Road,
Anna Nagar, Chennai 600 040.

Respondents/Defendants

(Applicant/Plaintiff and respondents/defendants 2 to 7 Recorded as the legal heirs of deceased 1st defendant A.Srinivasulu as per order dated 30.07.2020 on memo in O.A.No.1023/2019).

This Original Application praying that this Honble Court be pleased to pass an order granting interim injunction restraining the respondents, their legal heirs, men, agents and any other persons claiming under or through them from selling, mortgaging or otherwise alienating or encumbering the property mentioned in the schedule hereunder pending disposal of the above

suit



This Original Application coming on this day before this court for hearing the court made the following order:

Reserved on: 29.06.2021

Delivered on: 14.07.2021

The applicant herein is the plaintiff in the suit. The suit has been filed for partition by granting a preliminary decree of 1/8th share in favour of the plaintiff in the property mentioned in the schedule appended to the plaint. The applicant/plaintiff herein is the daughter of the first respondent/first defendant and the first respondent died during the pendency of this proceedings. The respondents 2 to 7 are the brothers and sisters of the applicant/plaintiff who are also the legal heirs of the first defendant.

2. The case of the applicant/plaintiff is that there are three items of properties which are mentioned in the schedule to the plaint consisting of a house property in the city of Chennai and vast properties in various survey numbers in neighbouring districts i.e., Chengalpet and Thiruvallur. According to the applicant/plaintiff, the first defendant, the father of the applicant/plaintiff and the other defendants, was the owner of the house at Old Door No.21 A, New Door No.9, Plot No.2045, H-Block, 5th Street, off 12th Main Road, Anna Nagar, Chennai-40, land measuring 4900 sq.ft building thereon. The first defendant settled the aforesaid property in favour



2009, SRO Anna Nagar.

WEB COPY

3. Subsequently, one son, brother of the applicant/plaintiff A.S.Baskaran died on 25.04.2016 and in respect of his 1/4th share in Anna Nagar property described as Item No.1 in the plaint, he has executed a Will dated 19.11.2012, and registered as Document No.107 of 2012, SRO Anna Nagar. The respondents 2 to 4 have filed O.P.No.269 of 2017 seeking letters of administration in respect of the Will executed by the deceased brother A.S.Baskaran and according to the applicant/plaintiff that the Will was not executed in a sound state of mind by the deceased brother and the said original petition was contested and the same was converted into T.O.S.No.29 of 2018 and the same is pending before this Court.

4. As far as the properties listed in Item 2 of the schedule properties, were admittedly ancestral properties devolved from the grandfather Nathamuni chetty and his wife Rukmaniammal. According to the applicant/plaintiff that the properties originally devolved on their son Varadharajalu Chetty and thereafter, to his sons viz., Srinivasalu, the deceased first defendant and Mohana Krishnan. There was a Koorchit partition effected between the first defendant and his brother the said Mohana Krishnan on 07.07.1985 in respect of the ancestral properties of the plaintiff's grandfather Varadharajalu Chetty, measuring an extent of



Taluk (Item No.II) along with four natham house plots with house building which have been allotted to the share of the late Srinivasalu, the first defendant herein.

5. The grievance of the applicant/plaintiff herein is that the vast extent of the properties to an extent of 10.18-1/2 acres in Item No.II, have been settled in favour of her brothers for their exclusive possession and enjoyment and except an extent of 0.66 cents alone has been allotted to the share of the applicant. According to the applicant/plaintiff, the Koorchit partition which is said to have taken place in 1985, is not valid in the eye of law and hence, she is entitled to equal 1/8 share in the schedule mentioned properties (Item No.II).

6. As regards the properties mentioned in Item No.III, the same originally belonged to one Ranganayakiammal, Wife of Shri. Kanniah Chetty and the sister of Varadharajalu Chetty, the grand father of the applicant and since Kanniah Chetty and Ranganayakiammal did not have children, they treated the first defendant Srinivasulu and his brother Mohana Krishnan as their sons and they have given all the properties to both of them equally. Even in these properties, without giving any share to the

applicant/plaintiff, the defendants 1 to 4 claim that they got right over the



properties through a Will dated 24.02.1961. The said properties (Item No.III) are not self acquired properties of the first defendant. Therefore, the applicant has a definite share in these properties as well. According to her, her brothers are illegally misappropriating the entire properties and enjoying the same without giving equal share to her in the properties.

7. The learned counsel Mr.S.Shanmugasundaram, appearing for the applicant/plaintiff reiterated the above facts and submitted that the so called Koorchit partition said to have taken place in 1985, is not valid in the eye of law. Such Koorchit partition could be recognised only for collateral purpose. The learned counsel also submitted that as per Section 6(5) of Hindu Succession Act, Koorchit partition is not recognised and cannot be the basis of claiming title and ownership of the properties by the respondents/defendants to the exclusion of the applicant/plaintiff herein. The learned counsel would submit that from and out of 10.18-1/2 Acres in Item No.II properties, only a paltry of 0.66 cents was settled in favour of the applicant herein.

8. The learned counsel would submit that as far as the properties listed in Item No.III are concerned, the entire extent of 25.83 Acres has been in possession and enjoyment of the brothers of the applicant, the respondents 2 to 4 herein. The learned counsel would vehemently submit



that being one of the legal heirs of the first defendant, she is entitled to 1/8th share of the properties as the properties are admittedly ancestral properties which cannot be enjoyed only by the male legal heirs alone.

9. The learned counsel would draw the attention of this Court to paragraph No.10 of the counter affidavit filed on behalf of the respondents 2 to 4 which stated that the respondents are taking steps to develop and deal with the property detailed in Serial No.16 of Item III of the plaint schedule. If the respondents/defendants are not prevented from going ahead with their proposal, even if the applicant succeeds in the suit at a later point of time, she would not be able to realize the fruits of any judgment of this Court in future as the property may change hands and the third parties rights may intervene. Therefore, the learned counsel would submit that as the applicant being one of the legal heirs of the first defendant and the properties in question are ancestral properties, she has definite share in the property and in view of the same, she is entitled to be granted interim relief to safeguard her right pending disposal of the suit. This is more so, when the respondents 2 to 4 themselves have declared in the counter affidavit that they are in the process of developing some properties shown in the schedule.



respondents 2 to 4 would submit that the plaintiff/applicant is not entitled to grant of injunction for the simple reason the she has been given 66 cents already and she has been enjoying the said property forming part of the properties shown in Item No.II of the schedule. Moreover, one of the brothers of the applicant late Baskaran when he died, he has left behind a Will dated 19.11.2012 and in the Will, he has also bequeathed some property described as in Item No.IV of Schedule B appended to the Will in favour of the applicant herein. As per the Will, 68 cents comprised in S.No.472/1 of 116 Sholavaram Village, Ponneri Taluk has been allotted in favour of the applicant herein along with another sister.

11. The learned counsel would also draw the attention of this Court to the Will left behind by the late Kanniah Chetty and Ranganayakiammal dated 24.02.1961, wherein, it is clearly stated that the sons of Varadharajalu Chetty viz., the first defendant and his brother Mohana Krishnan can enjoy the properties for their life time without any right to alienate and thereafter, the properties must devolve on the male legal heirs of the first defendant and his brother Mohana Krishnan. As per the wish of the Testator, the properties devolved upon the brothers viz., the respondents 2 to 4, against which, the applicant cannot lay any claim at all.

12. The learned counsel would further submit that in any case as far



as the Anna Nagar, Chennai property is concerned, it was settled in favour of the brothers by way of a registered settlement dated 11.06.2009 and when one of the brothers died, he has also bequeathed a part of a property in favour of the applicant in respect of his 1/4th share. In the said circumstances, there cannot be any further claim by the applicant against the schedule properties and such claim is not supported by any materials.

13. The learned counsel for the applicant/plaintiff submitted that in respect of the large extent of properties what is settled in favour of the applicant is only a small extent of 66 cents and the Will of the deceased brother Mr.Baskaran was also a smaller extent of 68 cents, that too to be shared between the applicant and the sixth respondent sister. On the other hand, the brothers have been enjoying the entire extent of properties in Item Nos.I & III. As far as Item II properties, only a minuscule extent of 0.66 cents settled in favour of the applicant/plaintiff. According to the learned counsel that some reasonable settlement must happen in all fairness and the male siblings alone cannot be allowed to enjoy almost the entire extent of the properties which admittedly devolved upon them from their ancestors.

14. This Court considered the arguments advanced on behalf of the
contesting parties and perused the pleadings and materials placed on record.



The principal case of the applicant/plaintiff herein is that she being one of the legal heirs of the first defendant and the sister of the other defendants, she is entitled to 1/8th share in the properties described in the schedule. As far as the first Item of the property is concerned, it appears from the pleadings that the house property at Anna Nagar, Chennai was a self-acquired property of the first defendant and the same was settled on the sons by way of a registered settlement deed dated 11.06.2009. In view of the execution of the settlement deed during the life time of the first defendant in favour of the applicant's brothers herein, the applicant's right to claim a share in the said Item of property is questionable at this stage.

15. As far as the second Item of properties, the principal contention of the learned counsel for the applicant is that the properties being ancestral, the applicant is entitled to equal share. On the other hand, it was argued that there was a Koorchit partition in 1985 and subsequently, the properties have come in to the possession and enjoyment of the respondents 2 to 4. Here again, whether the Koorchit partition was valid or not and to what extent, the properties devolved on the brothers and whether the applicant herein could claim any right in such properties, are all the matters to be gone into at the time of trial and this Court is therefore, is of the considered view that

the right of the applicant herein has still not crystalized as yet to lay any



claim in respect of properties in Item No.II.

WEB COPY

16. In regard to Item No.III properties, on behalf of the defendants, the Will was referred to which was executed by Kanniah Chetty and Ranganayakiammal, wherein, it has been clearly stated that the properties would ultimately devolve on the male legal heirs of the first defendant and his brother Mohana Krishnan. In the face of such clear wish of the Testators, how far the applicant could claim any right over the said properties, is again a matter for consideration not on this stage, but, at the stage of final determination of the rights of the parties during the trial.

17. On the whole, this Court is of the considered view that the applicant /plaintiff has not made out any prima facie case for this Court to give any interim protection. Although, the learned counsel would draw the attention of this Court to paragraph No.10 of the counter affidavit, wherein, the respondents 2 to 4 stated that they are planning to develop some portions of properties mentioned in Item No.II of the schedule, yet this Court does not think that at the instance of the applicant herein who has not come with clear case of establishing her right to claim equal share in the property, grant of interim injunction as prayed for may not be legally

correct. In the result, this Court is not inclined to order this original



application.

WEB COPY

18. For the above said reasons, this Original Application stands dismissed and the suit may be posted for hearing in the usual course.

Sd/.VPNJ.
14.07.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.
JJ 22/07/2021